

Application No.: 09/581,021

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REMARKS

Claims 59-68 has been withdrawn from consideration. Claims 1, 47-58 and 69-70 are pending in this application. Claims 1, 51 and 53-55 have been amended. No new matter has been added.

The acknowledgement of Applicants claim for foreign priority based on an application filed June 29, 2000, is noted. The requirement for a translation, however, is traversed. In order to prefect priority, only a certified copy of the foreign application is required. Translation is only required if the priority date is used to avoid a rejection.

Withdrawal of the rejection of the claims under 35 U.S.C. § 112 is requested. The claims have been further amended, and changes made to deal with the specific matters raised in the Office Action, as well as to improve their overall clarity.

For instance, in claim 1 it is clear that information is outputted from terminal devices, not goods.

As to the inquiry as to how a plurality of goods which remain unsold are sequentially concluded, the claims have been amended to clarify that remaining unsold goods are subsequently sold when selling conditions agree with buying conditions for the goods.

As to the term pre-engagement, it is clear that the concept is to execute a contract for sale before delivery, *i.e.* an advance order. Thus, a deal for perishable goods may be made in advance of a subsequent delivery date.

Withdrawal of the rejection of the claims under 35 U.S.C. § 101. The claims do provide for a concrete result, *i.e.*, the sale of goods. The claim is not in a form where it merely manipulates data, but where it determines from data when a sale is to be made, and then makes a bargain for the goods. Each of the claims is directed to an apparatus for buying and selling goods which is clearly more than manipulation of data. In claim 1, this is expressed as executing a sale, in claim 51 this is expressed as an apparatus for buying and selling goods, where a sale is

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made from collating selling and buying information. Each of the claims requires that the apparatus be connected to a computer network and to terminal devices. It is submitted that this structure goes far beyond the mere manipulation of data.

Withdrawal of the rejection of the claims under 35 U.S.C. § 101 as being directed to non-statutory subject matter is requested. The currently recited claims, which are directed to apparatus as well as a storage medium to hold a computer program, provide the concrete result of conducting a sale. Each of the claims has for its object formation of a bargain so that the sale can be made. This constitutes a practical application which in accordance with MPEP § 2106, Computer Related Inventions Patentability, meets the standards of 35 U.S.C. § 101. For instance, referring to the aforesaid MPEP Section, the rejected claims can be classified as apparatus.

A claim limited to a machine or manufacture, which has a practical application in the technological arts, is statutory. In most cases, a claim to a specific machine or manufacture will have a practical application in the technological arts. See *Alappat*, 33 F.3d at 1544, 31 USPQ2d at 1557 ("the claimed invention as a whole is directed to a combination of interrelated elements which combine to form a machine for converting discrete waveform data samples into anti-aliased pixel illumination intensity data to be displayed on a display means. This is not a disembodied mathematical concept which may be characterized as an 'abstract idea,' but rather a specific machine to produce a useful, concrete, and tangible result."); and *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601 ("the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces 'a useful, concrete and tangible result' - a final share price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades."). Also see *AT&T*, 172 F.3d at 1358, 50 USPQ2d at 1452 (Claims drawn to a long-distance telephone billing process containing mathematical algorithms were held patentable subject matter because the process used the algorithm to produce a useful, concrete, tangible result without preempting other uses of the mathematical principle.).

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It is clear that the foregoing claims meet the requirements of this section of the MPEP.

Withdrawal of the rejection of the claims under 35 U.S.C. § 102 as being anticipated by Walker et al. (U.S. Pat. No. 5,794,207) is requested. The reference is directed to an apparatus which can conclude a sale of goods where buyers and sellers provide information via computer terminals. In one embodiment of the invention, a buyer purchases goods based on a plurality of pieces of selling information presented from a plurality of sellers which is ordered. For example, a buyer can specify information  $X_a$  identifying certain goods of interest. A plurality of sellers can present selling information for each seller  $Y_a, Y_b, Y_c$ , etc. and the buyer can purchase the goods from the seller having the lowest price. In this embodiment, the bargain is concluded based on the order of the selling information. Specifically, there is one buyer and  $N$  sellers having  $N$  pieces of selling information  $1:N$ . The ordered information is used to select a low price item.

The present invention provides for the purchase and sale process based on a plurality of pieces of buying information as well as a plurality of pieces of selling information. Plural buyers and plural sellers who want to buy and sell specific goods are linked together to form a system generally described as  $M:N$ , representing plural sellers and buyers. Thus, plurality buying information  $X_a, X_b, X_c$ , etc. and a plurality of selling information  $Y_a, Y_b, Y_c$ , etc. regarding specific goods is entered via the buyer and seller terminals and is used to form a bargain for goods. In this system, it is not necessary that the buyers or the sellers compete against each other, only that each has what the other wants and a common buying and selling price.

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The present invention differs from the Walker et al. patent. The Walker device provides a buyer ability to purchase a ticket from one of a plurality of sellers who want to sell the ticket. With the Walker et al. system of the '207 patent, two or more people may wish to purchase a ticket. This is effectively a 1:N relationship.

The Walker '207 reference fails to disclose a plurality of buyers and sellers of the same product linked together to form a sale. That is, the reference fails to disclose a plurality of pieces of selling and a plurality of pieces of buying information for the same product, where a bargain is made once the conditions for both selling and buying information matches. The M:N transaction scenario is not disclosed at all in Walker. The Walker '207 patent merely shows that a transaction can be made between a buyer and plural sellers for the same goods.

FIG. 16 of the present application represents this transaction scenario which is not disclosed in the Walker '207 patent. (1) Three sellers can sell, for instance, chrysanthemum/white by posting selling information such as a unit price at .90 dollars to 1.20 dollars, (2) unit price at 1.1 dollars, and (3) unit price at 1.15 to 1.2 dollars respectively. One of five buyers can issue buying information comprising a desired unit price of less than 1.10 dollars, and this will correlate with the selling information of the first and second sellers since there is an agreement on price. Similarly, nine collations about selling information from three sellers, and selling information from five buyers of the chrysanthemum/white flowers are carried out. Among the nine collations, a conclusion is reached in the order of the higher buying price or in the order of the larger number of candidates. If the conditions specified in the selling information and the buying information match, within one cycle of processing (within the limits of FIG. 7 (c)), a plurality of deals are concluded between a plurality of sellers and buyers.

Using clustering, it is possible for a plurality of sellers and plurality of buyers to provide selling and buying information about numerous products, besides the chrysanthemum/white flowers, such as chrysanthemum/yellow and rose flowers, etc. as indicated on page 56 of the specification. The information is clustered, for the same goods, and when buying and selling information for the same goods correspond, a sale is concluded.

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The foregoing is not disclosed in the Walker et al. '207 patent, which discloses purchasing a ticket from a buyer by a plurality of sellers representing the transaction 1:N. If two purchasers are attempting to purchase a ticket, Walker et al. performs two separate transactions for each of the purchasers X1 and X2. Since these purchases are not in any way linked, the dealing process cannot be concluded based on which purchaser has the higher bidding price.

Withdrawal of the rejection of claims 1, 47-58, 69 and 70 under 35U.S.C. § 102 as being anticipated by Walker et al. (U.S. Pat. No. 6,112,185) is requested. The Walker et al. '185 device provides two or more upgrade offers to a traveler. The upgrade is offered not for any particular seat. The airline, seller, does not indicate any selling conditions for any one seat being offered for sale. The process merely sells the upgrade at the highest price offered by a perspective purchaser of a vacant seat.

The reference is based on selling information where a plurality of buyers indicate a plurality of pieces of order information  $X_a$ ,  $X_b$ ,  $X_c$ , etc. for one piece of selling information  $Y_a$ . In this system, the reverse occurs where the highest offering price is used to conclude a bargain for the goods. This process is performed where the order information is more generally described as M:1, or M as a plurality of buyers and 1 is a seller.

The present application provides a mechanism for a plurality of sellers and buyers looking to buy the same products, and when conditions are agreeable between buyer and seller, multiple deals are concluded in one dealing process. In the Walker et al. '185 patent, a single selling item, *i.e.*, one selling product is offered for sale to multiple buyers. One deal is concluded for the single available vacant seat, among competing buyers. Accordingly, the subject matter of the reference cannot anticipate the present claims.

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Withdrawal of the rejection of the claims under 35 U.S.C. § 103 as being unpatentable over Ordish (EP 0434224A2) in view of Walker et al. (U.S. Pat. No. 6,112,185) is requested. As was pointed out with respect to the '185 patent, the present invention is directed to multiple sellers and buyers dealing for one selling product. In accordance with claim 1, there is a first and second dealing processing means for selling goods. The second dealing processing means determines a processing order for selling information based on selling conditions of goods which remain unsold. The selling information for the goods is collated with the buying information for the goods, received from multiple buyer terminals, and when selling conditions agree with buying conditions, a sale is concluded.

In accordance with still other claims, *i.e.*, 51-54, 64-66 and 70, there are cluster formation means provided for goods having the same buying conditions. By utilizing the cluster formation means, it is possible to create a bargain between goods where buying conditions contained from a plurality of buyers meet the selling conditions for a plurality of sellers. It is submitted that in reviewing the '185 patent, there are no cluster means, or any method for creating a cluster of buying information for goods having the same buying conditions identified in a plurality of pieces of buying information from a plurality of sellers.

The Ordish reference also fails to disclose any of this structure. Accordingly, it is not seen how any combination of the Ordish subject matter with the Walker et al. '185 subject matter can yield or disclose the subject matter of the Applicants claims.

In view of the foregoing, favorable reconsideration is requested. In the event the Examiner considers that an interview would expedite prosecution of this subject matter, he is urged to contact the undersigned at the telephone number below.

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Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 21776-00050-US from which the undersigned is authorized to draw.

Dated:

3/30/05

Respectfully submitted,



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